

Assembly Bill No. 958

CHAPTER 307

An act to amend Sections 67002, 67041, 67042, 67051, 67052, 67053, 67054, 67055, 67056, 67059, 67060, 67132, 67134, 76600, 76602, 76604, 76650, 76651, 76652, 76700, 76701, 76702, 76705, 76706, 76707, 76708, 76709, 76712, 76714, 76715, 76716, 76717, 76718, 76750, 76800, 76851, 76852, 76900, 76901, 76901.5, 76903, 76904, 76904.5, 76905, 76906, 76907, 76908, 76909, and 76910 of, to add Sections 67052.3 and 67052.5 to, to add Article 9.5 (commencing with Section 76961), Article 10 (commencing with Section 76971), and Article 11 (commencing with Section 76981) to Chapter 16 of Part 2 of Division 22 of, to repeal Sections 67043 and 67044 of, and to repeal and add Article 9 (commencing with Section 76950) of Chapter 16 of Part 2 of Division 22 of, the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 21, 2015. Filed with
Secretary of State September 21, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 958, Committee on Agriculture. Agriculture: California Avocado Commission: California Salmon Council.

(1) Existing law establishes the California Avocado Commission, which is charged with, among other duties, promoting the sale of avocados by advertising and other promotional means for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for avocados. Existing law requires the commission to establish 5 districts within the state, each representing approximately 20% of the avocado production in California, and, beginning in the 2000–01 marketing season, requires those districts to be reapportioned every 5th year in accordance with certain procedures. Under existing law, the commission consists of 10 avocado producers who are not handlers, 2 elected from each of the 5 districts, 4 avocado handlers who are elected on a statewide basis, one public member who is appointed by the Secretary of Food and Agriculture, and the secretary who serves as a nonvoting ex officio member. Existing law also provides for an alternate member for each member of the commission, except the secretary, to be elected in the same manner as the member.

This bill would instead require the commission to establish no fewer than 3 districts and no more than 5 districts within the state, each representing approximately the same percentage of avocado production in California, and would require those districts to be represented by a specified number of producers who are not handlers according to the number of districts the commission establishes. The bill would require the districts to be

reapportioned every 5th year in accordance with redistricting procedures adopted by a two-thirds vote of the commission and concurred in by the secretary. The bill would provide for an alternate member for each district instead of providing an alternate member for each producer member of the commission. The bill would provide for 2 alternate handler members and for each alternate handler member to be assigned to serve as an alternate to two handler members, as specified, instead of providing an alternate handler member for each handler member of the commission. The bill would make conforming and other related changes.

(2) Existing law, the California Salmon Marketing and Development Act, creates the California Salmon Council, consisting of 9 voting members, appointed by the Secretary of Food and Agriculture, and 5 nonvoting members, as provided. Under existing law, the council is required to provide advice and investigations for, and perform duties delegated to it by, the secretary, including programs to promote education, research, and public information regarding the consumption of salmon and salmon products. Existing law provides for referendum voting by commercial salmon vessel operators, as defined, to determine whether the act should be implemented and, periodically, to review whether the operation of the act and the council should be continued. Upon approval of the referendum, existing law requires fishermen to pay specified assessments to the secretary and requires the secretary to expend and invest those moneys for purposes of the act. A violation of the act is a misdemeanor.

This bill would change the composition of the council to include 3 nonvoting members and would make various changes to the requirements covering commercial salmon fishing, with regard to notification of the adopted regulations by the secretary.

The bill would require the secretary to establish a list of handlers, defined to include processors, receivers, and wholesalers, and would provide for referendum voting by those handlers to determine whether they shall be subject to the act. Upon approval of the referendum, the bill would change the composition of the council to include 11 voting members appointed by the secretary. Upon approval of the referendum, the bill would require fishermen who sell salmon to the ultimate consumer and handlers to pay specified assessments to the secretary and would require the secretary to expend and invest those moneys for purposes of the act, thereby making an appropriation. The bill would include handlers, if subject to the act, in the periodic referenda to determine whether the operation of the act and the council should be continued and would make other conforming changes. By authorizing handlers to be subject to the requirements of the act, the violation of which is a misdemeanor, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 67002 of the Food and Agricultural Code is amended to read:

67002. Opportunity exists for continued growth and expansion of the industry, by creating new markets. The success of an expansion program is uniquely dependent upon effective advertising, promotion, and collection and dissemination of public information, since the creation of new markets is essentially a matter of educating and informing people of the use, nutritional value, and availability of avocados.

SEC. 2. Section 67041 of the Food and Agricultural Code is amended to read:

67041. The commission shall establish no fewer than three districts and no more than five districts within the state, each representing approximately the same percentage of avocado production in California.

SEC. 3. Section 67042 of the Food and Agricultural Code is amended to read:

67042. Beginning in the 2000–01 marketing season, districts shall be reapportioned every fifth year in accordance with redistricting procedures adopted by a two-thirds vote of the commission and concurred in by the secretary.

SEC. 4. Section 67043 of the Food and Agricultural Code is repealed.

SEC. 5. Section 67044 of the Food and Agricultural Code is repealed.

SEC. 6. Section 67051 of the Food and Agricultural Code is amended to read:

67051. (a) There is in the state government the California Avocado Commission.

(b) The commission shall be composed of the following members:

(1) (A) If the commission consists of three districts, nine producers who are not handlers, three elected from each district.

(B) If the commission consists of four districts, eight producers who are not handlers, two elected from each district.

(C) If the commission consists of five districts, 10 producers who are not handlers, two elected from each district.

(2) Four avocado handlers elected on a statewide basis.

(3) One public member who shall be appointed to the commission by the secretary from nominees recommended by the commission.

(4) The secretary who shall be a nonvoting ex officio member of the commission.

SEC. 7. Section 67052 of the Food and Agricultural Code is amended to read:

67052. (a) Each district shall have one alternate producer member, to be elected in the same manner as producer members.

(b) The alternate producer member shall, in the absence of a producer member from the same district, sit in place of the producer member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the producer member when sitting on the commission.

SEC. 8. Section 67052.3 is added to the Food and Agricultural Code, to read:

67052.3. (a) There shall be two alternate handler members to be elected in the same manner as the handler members.

(b) Each alternate handler member shall be assigned to serve as the alternate to two handler members in accordance with commission election procedures.

(c) An alternate handler member shall, in the absence of an assigned handler member, sit in place of the absent handler member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the handler member when sitting on the commission.

SEC. 9. Section 67052.5 is added to the Food and Agricultural Code, to read:

67052.5. (a) There shall be one alternate public member who shall be appointed by the secretary from nominees recommended by the commission.

(b) The alternate public member shall, in the absence of the public member, sit in place of the absent public member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the public member when sitting on the commission.

SEC. 10. Section 67053 of the Food and Agricultural Code is amended to read:

67053. (a) Any vacancy of a member position on the commission occurring for any reason including the failure of any member to continue in his or her position due to a change in status making him or her ineligible to serve, or through death, removal, or resignation, shall be filled, for the unexpired portion of the term, by the alternate member for that position.

(b) Any vacancy of an alternate member position on the commission occurring for any reason, including the alternate's move to the member position or the failure of any alternate member to continue in his or her position due to a change in status making him or her ineligible to serve, or through death, removal, or resignation, shall be filled for the unexpired portion of the term by a majority vote of the commission.

(c) Any person filling a vacant member or alternate member position shall fulfill all the qualifications set forth in this article as required for the member or alternate member.

SEC. 11. Section 67054 of the Food and Agricultural Code is amended to read:

67054. (a) Producer members and alternate producer members on the commission shall have a financial interest in producing, or causing to be produced, avocados for market. In order to be elected a member or alternate member, a producer shall, at the time of the election, have a financial interest in the production of avocados within the district in which the producer stands for election.

(b) A producer may stand for election in any district in which the producer has a financial interest in the production of avocados.

(c) A producer who chooses to stand for election in a particular district shall not stand for election in any other district for a period of four years from the date of his or her most recent election to the commission. However, this subdivision does not apply in an election to fill vacancies created by the reapportionment of districts pursuant to Section 67042.

(d) Handler members and the alternate handler members shall have a financial interest in handling avocados for markets.

(e) The public member shall not have any financial interest in the avocado industry. Except for the nomination of another public member, the public member and his or her alternate member on the commission shall have all the powers, rights, and privileges of any other member on the commission.

SEC. 12. Section 67055 of the Food and Agricultural Code is amended to read:

67055. (a) Except as specified in subdivision (b), the term of office of all members and alternate members, except the ex officio member, shall be for two years from the date of their election or appointment and until their successors are qualified.

(b) Of the first members of the commission from each district, one shall serve for one year, and the remaining member or members shall serve for two years, with the determination of the term of each member to be made by lot. Subsequent to the election of the first members from each district, the terms of the members shall continue to be staggered, as provided in this subdivision.

(c) Terms of office of each member and alternate member shall be limited to four consecutive terms.

SEC. 13. Section 67056 of the Food and Agricultural Code is amended to read:

67056. The commission shall have the power to sue and be sued and to contract and be contracted with. Copies of its proceedings, records, and acts, when certified by an officer, are admissible in evidence in all courts of the state, and are prima facie evidence of the truth of all statements therein.

SEC. 14. Section 67059 of the Food and Agricultural Code is amended to read:

67059. Unless otherwise specified, a quorum of the commission shall be any 11 voting members if the commission consists of three or five districts and any 10 voting members if the commission consists of four districts. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the commission.

SEC. 15. Section 67060 of the Food and Agricultural Code is amended to read:

67060. A member, alternate member, or member of a committee who is a nonmember of the commission shall not receive a salary, but may receive a sum of not to exceed one hundred dollars (\$100) per day, as established by the commission, for each day spent in actual attendance at or in traveling to and from meetings of the commission or committees of the commission,

or on authorized assignment for the commission, together with the necessary traveling expenses and meal allowances, as approved by the commission.

SEC. 16. Section 67132 of the Food and Agricultural Code is amended to read:

67132. Upon the finding of 11 voting members of the commission if the commission consists of three or five districts, or of 10 voting members of the commission if the commission consists of four districts, that this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operations of the commission shall be suspended, provided that the suspension shall not become effective until the expiration of the current marketing season. The secretary shall, upon receipt of the recommendation, or upon a petition filed with him or her requesting the suspension, signed by 15 percent of the producers by number who produced not less than 15 percent of the volume in the immediately preceding year, cause a referendum to be conducted among the listed producers to determine if the operation of this chapter and the operations of the commission shall be suspended, and shall establish a referendum period, which shall not be less than 10 days nor more than 60 days in duration. The secretary is authorized to prescribe any additional procedure necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period. If at least 40 percent of the total number of producers, on a list established by the secretary marketing 40 percent of the total volume marketed by all producers during the last completed marketing season, participate in the referendum, the secretary shall suspend this chapter upon the expiration of the current marketing season, if he or she finds either one of the following:

(a) Sixty-five percent or more of the producers who voted in the referendum voted in favor of the suspension, and the producers so voting marketed 51 percent or more of the total quantity of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.

(b) Fifty-one percent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed 65 percent or more of the total quantity of avocados marketed in the preceding season by all of the producers who voted in the referendum.

SEC. 17. Section 67134 of the Food and Agricultural Code is amended to read:

67134. Upon suspension of this chapter and the commission, a notice shall be issued by the secretary, and a copy of the notice shall be published in a newspaper of general circulation in each district. The commission shall provide a copy of the notice of suspension to all producers and handlers affected by the suspension whose names and addresses are on file.

SEC. 18. Section 76600 of the Food and Agricultural Code is amended to read:

76600. The Legislature finds and declares that this chapter is enacted in the exercise of the power of this state for the purposes of protecting and furthering the public health and welfare.

SEC. 19. Section 76602 of the Food and Agricultural Code is amended to read:

76602. The Legislature declares that the purposes of this chapter are as follows:

(a) Enable the salmon fishery, with the aid of the state, to develop, maintain, and expand the state, nationwide, and foreign markets for salmon and salmon products harvested, processed, manufactured, sold, or distributed in this state for human consumption, and the use and consumption of salmon and salmon products in those markets.

(b) Enable the salmon fishery to purchase, where there are willing sellers, the allocation rights to harvest salmon, as they may exist, of other salmon user groups to provide fishermen, and thereby the salmon fishery, greater access to salmon stocks than otherwise may have been provided pursuant to a conservation, management, or allocation agreement.

(c) In aid, but not in limitation, of the purpose in subdivision (a), authorize and enable the secretary to formulate and effectuate, directly or in cooperation with other agencies, organizations, including the Oregon Salmon Commission, and instrumentalities that are specified in this chapter, sales stimulation and consumer or other educational programs designed to increase the use and consumption of salmon and salmon products for human consumption.

(d) Provide funds for the administration and enforcement of this chapter by mandatory fees to be collected in the manner prescribed in this chapter.

SEC. 20. Section 76604 of the Food and Agricultural Code is amended to read:

76604. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, that invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SEC. 21. Section 76650 of the Food and Agricultural Code is amended to read:

76650. The secretary shall administer and enforce this chapter, and may exercise any of the administrative powers that are conferred by Sections 11180 to 11191, inclusive, of the Government Code upon a head of a department. In order to effectuate the declared purposes of this chapter, the secretary may contract to carry out the declared intent and purposes of this chapter.

SEC. 22. Section 76651 of the Food and Agricultural Code is amended to read:

76651. Upon recommendation by the council, the secretary may adopt, consistent with this chapter, any regulations that cover the administration and enforcement of this chapter that may be necessary to carry out the purposes and attain the objectives of this chapter, except the secretary shall

not engage in any salmon promotion activity or pursue the purchase of allocation rights to harvest salmon without the approval of a majority of the voting members of the council.

SEC. 23. Section 76652 of the Food and Agricultural Code is amended to read:

76652. Upon the adoption of any regulations under this chapter, a copy of the regulations shall be displayed on the department's Internet Web site. No regulation shall become effective until five days after the date of display on the Internet Web site and mailing to every marketing association and every receiver that is directly affected by the regulations whose name and address may be on file in the office of the secretary and to every person who files in the office of the secretary a written request for a copy of the regulations.

SEC. 24. Section 76700 of the Food and Agricultural Code is amended to read:

76700. (a) There is in the state government the California Salmon Council. The council shall be composed of nine voting members and their alternates, and three nonvoting members.

(b) If handlers have become subject to this chapter pursuant to Article 9.5 (commencing with Section 76961), the council shall be composed of 11 voting members and their alternates, and three nonvoting members.

SEC. 25. Section 76701 of the Food and Agricultural Code is amended to read:

76701. (a) The voting members of the council shall be appointed by the secretary, after consultation with the Director of Fish and Wildlife, giving due consideration to proper geographic distribution.

(b) The nine members shall include:

(1) Five commercial salmon vessel operators or their representatives, and their alternates.

(2) Two handlers who are receivers or processors or their representatives, and their alternates.

(3) One representative of a handler who is an exporter or a wholesaler, and an alternate.

(4) One public member, and an alternate.

(c) If handlers become subject to this chapter pursuant to Article 9.5 (commencing with Section 76961), the 11 members shall include:

(1) Five commercial salmon vessel operators or their representatives, and their alternates.

(2) Three handlers who are receivers or processors or their representatives, and their alternates.

(3) Two representatives of a handler who is an exporter or a wholesaler, and their alternates.

(4) One public member, and an alternate.

SEC. 26. Section 76702 of the Food and Agricultural Code is amended to read:

76702. (a) The commercial salmon vessel operators and their alternates shall be selected from lists of nominees submitted by marketing associations

and any organization deemed to represent the majority of organized commercial salmon vessel operators, and from nominations by individual commercial salmon vessel operators.

(b) The receivers, processors, wholesalers, or exporters and their alternates shall be selected from lists of nominees submitted by an organization deemed to represent the majority of those organized groups in the state, and from individual receivers, processors, wholesalers, and exporters.

(c) The public member and alternate shall be selected by the secretary from a list submitted by the commercial salmon vessel operators and handler members of the council.

SEC. 27. Section 76705 of the Food and Agricultural Code is amended to read:

76705. Any vacancy in the membership of the council that occurs during the unexpired term shall be filled by the secretary for the unexpired term from the eligible nominees. No council member or alternate shall serve more than two consecutive three-year terms. Service as an alternate does not disqualify a person to then serve two additional terms as a member, and a member who was appointed for a one-year or a two-year term may serve two additional three-year terms.

SEC. 28. Section 76706 of the Food and Agricultural Code is amended to read:

76706. The secretary may remove any member of the council or alternate for cause, and, upon that removal, there is a vacancy that shall be filled in the manner as provided for the unexpired term in Section 76705.

SEC. 29. Section 76707 of the Food and Agricultural Code is amended to read:

76707. The secretary shall give notice, not later than January 31 of each year, of the vacancies that will exist upon the expiration of terms on March 31, in writing, to all marketing associations and organizations deemed to represent the majority of organized fishermen, or receivers, processors, wholesalers, and exporters, and shall issue any press releases and public statements that the secretary deems appropriate requesting nominations.

SEC. 30. Section 76708 of the Food and Agricultural Code is amended to read:

76708. (a) The notice requesting nominations shall indicate that nominations shall be mailed or sent electronically to the secretary at his or her office in Sacramento and that the secretary shall consider nominations sent electronically or postmarked not later than March 1.

(b) Nominations shall set forth all of the following:

- (1) The name and address of each nominee.
- (2) Whether each nominee is being nominated as a member or alternate member.
- (3) The type of category for which the nominee is being nominated.
- (4) The list of qualifications and supporters, if any, for the nominee.
- (5) The name and address of the nominating marketing association, organization, or individual.

SEC. 31. Section 76709 of the Food and Agricultural Code is amended to read:

76709. The nonvoting members of the council shall be representatives of the following agencies, as selected by the secretary:

- (a) The department.
- (b) The Department of Fish and Wildlife.
- (c) The California Sea Grant Program.

SEC. 32. Section 76712 of the Food and Agricultural Code is amended to read:

76712. (a) The council shall select annually from its voting members, to serve at its pleasure, a chair and vice chair.

(b) The chair and vice chair, together with four other voting members, selected annually by the council, shall constitute the executive committee of the council. The executive committee shall have and exercise any powers of the council that the council may delegate to it.

(c) If handlers have become subject to this chapter pursuant to Article 9.5 (commencing with Section 76961), the officers and the other members of the executive committee shall be equally divided between commercial salmon vessel operators and handlers.

SEC. 33. Section 76714 of the Food and Agricultural Code is amended to read:

76714. The voting members of the council shall receive forty dollars (\$40) per day per diem for each day spent in actual attendance at the meetings or on the business of the council and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their official duties, except, during the first year of council operations, when members shall serve at their own expense. Nonvoting members shall be reimbursed at the same rate as voting members when their agencies do not pay their expenses. Alternates shall only be paid expenses and per diem for meetings at which they serve as the replacement for the voting member.

SEC. 34. Section 76715 of the Food and Agricultural Code is amended to read:

76715. No member of the council, except members of the executive committee, shall receive compensation for more than three days' service per month. The chair may receive compensation for not more than seven days per month.

SEC. 35. Section 76716 of the Food and Agricultural Code is amended to read:

76716. The secretary may require any employee or agent of the council to give a fidelity bond, executed by a surety company that is authorized to do business in this state, in favor of the secretary, in the sum, and containing any terms and conditions, that the secretary may prescribe. The cost of the fidelity bonds of employees or agents of the council shall be paid from the funds that are collected pursuant to this chapter.

SEC. 36. Section 76717 of the Food and Agricultural Code is amended to read:

76717. No member or employee of the council shall be held responsible individually to any person for liability on any contract or agreement of the council. All salaries, expenses, costs, obligations, and liabilities that arise out of the administration and enforcement of this chapter are payable only from funds that are collected pursuant to this chapter.

SEC. 37. Section 76718 of the Food and Agricultural Code is amended to read:

76718. An alternate member of the council shall sit as a voting member of the council if the member for whom he or she is an alternate fails for any reason to attend any meeting of the council. The alternate member shall be compensated and reimbursed in the same manner and to the same extent as a voting member when so serving. When so serving, the alternate member has all of the powers, duties, liabilities, and immunities of the member in whose place he or she is serving, except that the alternate to the chair or vice chair shall not succeed to the functions of these offices.

SEC. 38. Section 76750 of the Food and Agricultural Code is amended to read:

76750. The duties of the council shall be advisory, except as to those duties that may be delegated to it by the secretary or as otherwise designated in this chapter. The council may, subject to the approval of the secretary, exercise any of the following powers that may be delegated to the council by the secretary:

(a) Recommend to the secretary administrative regulations that relate to the administration and enforcement of this chapter.

(b) Investigate all matters that affect the administration of this chapter, and to report violations of this chapter to the secretary.

(c) Employ and, at its pleasure, discharge a manager and such clerical help and other employees as it deems necessary, and to prescribe their duties and powers and fix their compensation.

(d) Contract with, or employ, and at its pleasure, discharge any other persons that it deems necessary, and in the cases of those persons it shall employ, to outline their powers and duties and fix their compensation.

(e) Establish offices and incur expenses incidental thereto.

(f) Make contracts and other agreements that may be proper to promote the sale of salmon and salmon products on either a local, state, national, or international basis.

(g) (1) Cooperate with any other local, state, or national commission, organization, or agency, whether voluntary or created by state or federal law, including, but not limited to, the Oregon Salmon Commission, and instrumentalities that are engaged in work or activities similar to the work and activities of the council, and to recommend to the secretary the making of contracts and agreements with those organizations or agencies for carrying on joint programs of education, research, publicity, and advertising.

(2) Recommend to the secretary the making of contracts and agreements with other councils, commodity commissions, or producer organizations for joint programs of publicity and advertising where those products are compatible with the promotion of salmon and salmon products.

(3) In matters of research, cooperate with organizations of recognized professional standing that are adequately equipped with facilities for the research that is contemplated.

(h) Recommend to the secretary the institution and promotion of scientific research to develop or discover, or both, the health, food, therapeutic, dietetic, and other uses of salmon.

(i) (1) Receive, invest, and disburse funds pursuant to Article 8 (commencing with Section 76900).

(2) Allocate funds to agencies not specifically or solely engaged in carrying on research or promotion for salmon, if the council and the secretary are satisfied that those allocations will be beneficial to the California salmon fishery and will tend to effectuate the declared purposes of this chapter.

(j) Present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect this chapter.

SEC. 39. Section 76800 of the Food and Agricultural Code is amended to read:

76800. The secretary shall conduct, or may cause the council to conduct, programs of education, research, or public information, that are designed to accomplish the following purposes, among others:

(a) Increase the consumption of salmon and salmon products.

(b) Gather, publicize, and diffuse accurate and scientific information that shows the importance of the use and consumption of salmon and salmon products in relation to the public health, economy, and diet, and proper nutrition of children and adults.

(c) Study means and methods that are employed in harvesting, processing, manufacturing, marketing, and distributing salmon and salmon products in order to comply with the sanitary and other regulations that are imposed by municipalities, this state, and the United States.

(d) Gather and disseminate information regarding the high standards that are observed and imposed to ensure pure and wholesome salmon and salmon products.

(e) Gather and disseminate information regarding the harmful effects on the public health resulting from the breakdown or instability of the salmon fishery, the factors and conditions peculiar to the salmon fishery that tend to cause an unbalanced production, and the price of salmon and salmon products in relation to the cost of other items of food in a balanced diet.

(f) Gather and disseminate information regarding the factors that tend to promote increased consumption of salmon and salmon products, stabilize the fishery, and foster a better understanding and more efficient cooperation among fishermen, receivers, processors, and the consuming public.

SEC. 40. Section 76851 of the Food and Agricultural Code is amended to read:

76851. If the Attorney General determines under Section 76850 that selling allocation rights to harvest salmon would be binding and consistent with California public policy and if an agreement for purchase of allocation rights of harvest is determined to be lawful and binding, the Director of Fish and Wildlife may, in consultation with the secretary, develop a program to

authorize the transfer of the allocation rights consistent with all other state or federal laws and regulations. Upon authorization by the Director of Fish and Wildlife, the secretary may, at a price and quantity agreed to by the council, and with funds available from the council, enter into an agreement for the purchase of the allocation rights to harvest from another user holding bona fide rights to harvest stocks of salmon.

SEC. 41. Section 76852 of the Food and Agricultural Code is amended to read:

76852. The council, in any negotiations for the purchase of tribal allocations of rights to harvest, if any, however they may exist, may, with the secretary, seek federal or other funds as may be available to match the council funds for the purchase of allocation rights to harvest in recognition of the federal government's responsibility to the Indian people and their resources.

SEC. 42. Section 76900 of the Food and Agricultural Code is amended to read:

76900. Programs and administration of the activities that are conducted pursuant to this chapter shall be funded as follows:

(a) (1) Every fisherman who sells salmon to any person who is required to be licensed as a fish receiver pursuant to Section 8033 of the Fish and Game Code shall pay the fee specified in Sections 76902 and 76905 for each pound, or fraction thereof, of salmon taken and sold by the fisherman to the fish receiver. The fee shall be collected from the fisherman and remitted to the secretary by any person licensed to receive fish to whom the salmon are sold.

(2) Every fisherman licensed pursuant to Section 8033.5 of the Fish and Game Code who sells salmon to the ultimate consumer shall pay the fee specified in paragraph (1) and, if handlers have become subject to this chapter pursuant to Article 9.5 (commencing with Section 76961), shall also pay the fee specified in paragraph (1) of subdivision (b) for each pound, or fraction thereof, of salmon taken and sold by the fisherman to the ultimate consumer. The fees shall be remitted to the secretary by the fisherman.

(b) (1) Every handler subject to this chapter pursuant to Article 9.5 (commencing with Section 76961) shall pay the fee specified in Sections 76902 and 76905 for each pound, or fraction thereof, of salmon received from a fisherman. The fee shall be remitted to the secretary by the handler.

(2) Every handler subject to this chapter pursuant to Article 9.5 (commencing with Section 76961) shall pay the fee specified in paragraph (1) and shall also pay the fee specified in paragraph (1) of subdivision (a) for each pound, or fraction thereof, of salmon that the handler has caught while conducting the activities of a commercial fisherman for his or her own processing or sale. The fees shall be remitted to the secretary by the handler.

SEC. 43. Section 76901 of the Food and Agricultural Code is amended to read:

76901. Consistent with Section 8041 of the Fish and Game Code, the following persons shall remit the fees required by subdivision (a) of Section 76900 to the secretary:

(a) Any person who is required to be licensed as a fish receiver by Section 8033 of the Fish and Game Code, and receives salmon in this state from persons conducting the activities of a commercial fisherman.

(b) Any commercial fisherman licensed pursuant to Section 8033.5 of the Fish and Game Code who sells salmon to the ultimate consumer.

SEC. 44. Section 76901.5 of the Food and Agricultural Code is amended to read:

76901.5. (a) Each person who is required by this chapter to collect a fee from fishermen or pay a fee as a handler shall maintain a complete and accurate record of all transactions subject to the fee. These records shall contain any information required by the secretary relating to the collection of fees, shall be preserved for a period of three years, and shall be available for review immediately upon demand by the secretary or the secretary's duly authorized agent.

(b) Any information obtained by the secretary or the secretary's duly authorized agent from inspection or audit of records shall be confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding.

SEC. 45. Section 76903 of the Food and Agricultural Code is amended to read:

76903. The fees imposed under this article shall be paid monthly to the secretary within 60 days after the last day of each month. If fees are not paid within 60 days after the month for which they are due, the secretary shall collect amounts owing under the procedures prescribed for sales and use taxes provided in Chapter 5 (commencing with Section 6451) of Part 1 of Division 2 of the Revenue and Taxation Code, insofar as they may be applicable, and for those purposes, "board" means the department and "the date of which the tax became due and payable," means that date 60 days after the month for which it is due.

SEC. 46. Section 76904 of the Food and Agricultural Code is amended to read:

76904. Sections 8058 to 8070, inclusive, of the Fish and Game Code apply to claims for overpayment of fees to the secretary. For purposes of this section, "department," as used in those sections, means the Department of Food and Agriculture, and "landing tax" means the fees imposed pursuant to this article.

SEC. 47. Section 76904.5 of the Food and Agricultural Code is amended to read:

76904.5. The secretary may consult with and enter into agreements with the Director of Fish and Wildlife where necessary and reasonable, to assist in the administration of this chapter and in enforcing compliance with this chapter. If an agreement is established, the secretary shall reimburse the Department of Fish and Wildlife for administrative costs associated with this chapter.

SEC. 48. Section 76905 of the Food and Agricultural Code is amended to read:

76905. After one year after the establishment of the council, and not before the commercial salmon season of 1990, the council may recommend to the secretary an increase over and above the two cents (\$0.02) per pound fee required by Section 76902 for the council to carry out its duties under this chapter. The council shall consider the budget for the council, funding for activities conducted pursuant to Article 6 (commencing with Section 76800) and Article 7 (commencing with Section 76850), as well as the market price of salmon, landing taxes imposed by the Department of Fish and Wildlife, assessments charged by marketing associations, and any other relevant factor affecting the economics of the salmon fishery. The council shall, in making any determination to increase fees, consult with marketing associations and, if the recommended increase would exceed seven cents (\$0.07) per pound of salmon sold, the council shall conduct a vote of persons on the secretary's lists established pursuant to Article 9 (commencing with Section 76950) and, if applicable, Article 9.5 (commencing with Section 76961). The secretary may not increase any fee without a majority approval of the voting members of the council.

SEC. 49. Section 76906 of the Food and Agricultural Code is amended to read:

76906. (a) All money that is collected by the secretary pursuant to this chapter shall be deposited in any bank, or other depository that is approved by the Director of Finance, allocated to the purposes of this chapter only, and disbursed by the secretary or the council only for the necessary expenses that are incurred by the council and the secretary in carrying out this chapter, including expenses generated by the auditing requirement contained in this section. Money that is so collected shall be deposited and disbursed in conformity with appropriate auditing regulations that are prescribed by the secretary. The expenditure of the money is exempt from Sections 925.6 and 16304 of the Government Code.

(b) All expenditures by the council and the secretary shall be audited at least once every two years by one of the following means:

- (1) By contract with a certified public accountant.
- (2) By contract with a public accountant holding a valid permit issued by the California Board of Accountancy.
- (3) By contract with a public accounting firm.
- (4) By agreement with the Department of Finance.

SEC. 50. Section 76907 of the Food and Agricultural Code is amended to read:

76907. Money that is deposited pursuant to Section 76906 may be invested and reinvested by the Treasurer or the council in any of the securities described in Article 1 (commencing with Section 16430) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, or placed in a depository as provided in Chapter 4 (commencing with Section 16500) of Part 2 of Division 4 of Title 2 of the Government Code, and handled in the same manner as money in the State Treasury. For these

purposes, the money may also be combined with funds that are determined by the secretary to be available for investment pursuant to Section 58939. Any increment that is received from investment, reinvestment, or deposit made by the Treasurer shall be remitted to the council. The Treasurer may deduct from the remittance an amount equal to the reasonable cost incurred in carrying out this section or may bill the council for the costs and the council shall pay the costs from money that is collected for it pursuant to this chapter.

SEC. 51. Section 76908 of the Food and Agricultural Code is amended to read:

76908. The secretary, after consultation with the council, shall prepare an annual budget that sets forth in reasonable detail the proposed expenditures that the secretary deems necessary for the performance by him or her and by the department of the duties that are imposed upon them by this chapter. The secretary shall also prepare and submit to the council an annual statement, in reasonable detail, of the secretary's expenditures pursuant to this chapter.

SEC. 52. Section 76909 of the Food and Agricultural Code is amended to read:

76909. The secretary may receive funds in amounts that may be reasonable and necessary to defray the initial expenses in making effective this chapter. The secretary shall reimburse those persons from whom those funds are received in the amounts received from any funds that are received by the secretary pursuant to this article.

SEC. 53. Section 76910 of the Food and Agricultural Code is amended to read:

76910. The secretary may accept contributions to advance the purposes of this chapter. If requested by the donor, the contributions shall be segregated and separately maintained for the use of the council.

SEC. 54. Article 9 (commencing with Section 76950) of Chapter 16 of Part 2 of Division 22 of the Food and Agricultural Code is repealed.

SEC. 55. Article 9 (commencing with Section 76950) is added to Chapter 16 of Part 2 of Division 22 of the Food and Agricultural Code, to read:

Article 9. Implementation and Voting Procedure for Fishermen

76950. On or before August 15, 1989, the secretary shall establish a list of commercial salmon vessel operators eligible to vote on implementation of this chapter. In establishing the list, the secretary may require that handlers and commercial salmon vessel operators submit the names and mailing addresses of all commercial salmon vessel operators who harvested salmon during the previous season, as evidenced by receipts prepared under Section 8043 of the Fish and Game Code, together with the volume of salmon landed. The secretary may also request the assistance of the Director of Fish and Wildlife for the names of all commercial salmon vessel operators who landed salmon the previous season and the volume of landings for each vessel. The

request for the information shall be in writing and shall be subject to the confidentiality provisions of Section 8022 of the Fish and Game Code. The list shall be filed within 30 days following receipt of the written notice.

76951. Any commercial salmon vessel operator whose name does not appear upon the secretary's list of commercial salmon vessel operators affected may have his or her name established on the list by filing with the secretary a signed statement, identifying himself or herself as a commercial salmon vessel operator and furnishing evidence of having made landings the previous year through the submission of receipts prepared under Section 8043 of the Fish and Game Code. Failure to be on the list does not exempt a commercial salmon vessel operator from paying assessments under this chapter.

76952. This chapter, except as necessary to conduct an implementation referendum vote under this article, shall not become operative until the secretary finds in an implementation referendum conducted by the secretary under this article that at least 40 percent of the total number of commercial salmon vessel operators from the list established by the secretary have participated by voting in the referendum, and the secretary finds either of the following:

(a) Sixty-five percent or more of the commercial salmon vessel operators who voted in the referendum voted in favor of implementing this chapter, and the commercial salmon vessel operators who voted in the referendum marketed 51 percent or more of the total quantity of salmon landed in the preceding fiscal year by all the commercial salmon vessel operators who voted in the referendum.

(b) Fifty-one percent of the commercial salmon vessel operators who voted in the referendum voted in favor of implementing this chapter, and the commercial salmon vessel operators who voted in the referendum marketed 65 percent or more of the total quantity of salmon landed in the preceding fiscal year by all of the commercial salmon vessel operators who voted in the referendum.

76953. The secretary shall establish a period in which to conduct the implementation referendum that shall not be more than 60 days in duration, and may prescribe additional procedures as may be necessary to conduct the referendum. If the initial period established is less than 30 days, the secretary may extend that period. However, the total referendum period may not exceed 60 days.

76953.5. (a) Before the referendum vote is conducted by the secretary, the proponents of the council shall deposit with the secretary the amount that the secretary determines is necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum vote.

(b) Any funds not used in carrying out this article shall be returned to the proponents of the council who deposited the funds with the secretary.

(c) Upon establishment of the council, the council may reimburse the proponents of the council for any funds deposited with the secretary that were used in carrying out this article, and for any legal expenses and costs incurred in establishing the council.

(d) After approval by the Commercial Salmon Trollers Advisory Committee created pursuant to Section 7862 of the Fish and Game Code, the Department of Fish and Wildlife may expend funds collected pursuant to Section 7861 of the Fish and Game Code, for payment to the Secretary of Food and Agriculture to pay necessary costs incurred in conducting the implementation referendum vote. If the commercial salmon vessel operators who voted in the implementation referendum voted in favor of implementing this article, as provided in Section 76952, the council shall reimburse the Commercial Salmon Stamp Account in the Fish and Game Preservation Fund all amounts received from that fund.

76954. Nonreceipt of a ballot shall not invalidate a referendum.

76955. (a) If the secretary finds that a favorable vote has been given, the secretary shall so certify and give notice of the favorable vote to all commercial salmon vessel operators whose names and addresses may be on file with the secretary.

(b) If the secretary finds that a favorable vote has not been given, the secretary shall so certify and declare all provisions of this chapter inoperative.

SEC. 56. Article 9.5 (commencing with Section 76961) is added to Chapter 16 of Part 2 of Division 22 of the Food and Agricultural Code, to read:

Article 9.5. Implementation and Voting Procedure for Handlers

76961. On or before January 31, 2016, the secretary shall establish a list of handlers eligible to vote on whether they shall be subject to this chapter. In establishing the list, the secretary may require that handlers provide receipts of the quantity of salmon received from commercial salmon vessel operators in the previous season. The secretary may also request the assistance of the Director of Fish and Wildlife in compiling the list. The request for the information shall be in writing and shall be subject to the confidentiality provisions of Section 8022 of the Fish and Game Code. The list shall be filed within 30 days following receipt of the written notice.

76962. Any handler whose name does not appear upon the secretary's list of handlers may have his or her name established on the list by filing with the secretary a signed statement, identifying himself or herself as a handler. Failure to be on the list does not exempt a handler from paying assessments under this chapter.

76963. This chapter shall not apply to handlers until the secretary finds in a referendum conducted by the secretary under this article that at least 40 percent of the total number of handlers from the list established by the secretary have participated by voting in the referendum, and the secretary finds either of the following:

(a) Sixty-five percent or more of the handlers who voted in the referendum voted in favor of being subject to this chapter, and the handlers who voted in the referendum handled 51 percent or more of the total quantity of salmon

landed in the preceding fiscal year by all the handlers who voted in the referendum.

(b) Fifty-one percent of the handlers who voted in the referendum voted in favor of being subject to this chapter, and the handlers who voted in the referendum marketed 65 percent or more of the total quantity of salmon landed in the preceding fiscal year by all of the handlers who voted in the referendum.

76964. The secretary shall establish a period in which to conduct the referendum that shall not be more than 60 days in duration, and may prescribe additional procedures as may be necessary to conduct the referendum. If the initial period established is less than 30 days, the secretary may extend that period. However, the total referendum period may not exceed 60 days.

76965. (a) Before the referendum vote is conducted by the secretary, the proponents of this article shall deposit with the secretary the amount that the secretary determines is necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum vote.

(b) Any funds not used in carrying out this article shall be returned to the proponents of this article who deposited the funds with the secretary.

(c) Upon passage of the referendum, the council may reimburse the proponents of this article for any funds deposited with the secretary that were used in carrying out this article, and for any legal expenses and costs incurred in approval of this article.

76966. Nonreceipt of a ballot shall not invalidate a referendum.

76967. (a) If the secretary finds that a favorable vote has been given, the secretary shall so certify and give notice of the favorable vote to all handlers whose names and addresses may be on file with the secretary.

(b) If the secretary finds that a favorable vote has not been given, the secretary shall so certify and declare this article inoperative.

SEC. 57. Article 10 (commencing with Section 76971) is added to Chapter 16 of Part 2 of Division 22 of the Food and Agricultural Code, to read:

Article 10. Continuation

76971. (a) Between January 1, 2019, and February 28, 2019, and in the same period each five years thereafter, the secretary shall, by the public hearing procedure, and if appropriate, the procedure specified in this article, determine whether the council program provided for in this chapter shall continue in effect.

(b) If the secretary finds from evidence received at the hearing that a substantial question exists as to whether the council program is contrary to or does not effectuate the declared purposes or provisions of this chapter or receives in writing a referendum petition with the signatures of 25 percent or more of the number of commercial salmon vessel operators who made landings in the previous year, as evidenced by receipts prepared under

Section 8043 of the Fish and Game Code, and, if applicable, 25 percent or more of the handlers who are subject to this chapter, the council program shall be submitted to referendum as provided in this article.

76972. If the secretary determines that a referendum procedure is appropriate, the secretary shall establish a referendum period of not to exceed 30 days during which period ballots shall be submitted to every commercial salmon vessel operator and, if applicable, every handler subject to this chapter on a statewide basis. If the secretary determines that the referendum period does not provide sufficient time for the balloting, the secretary may extend the referendum for an additional period not to exceed 30 days. The ballots shall provide a “yes” or “no” voting alternative to the following question: “Shall the California Salmon Council be continued for the next five fiscal years commencing April 1, following this referendum?”

76973. If the council program is submitted to a referendum as provided in this article, the secretary shall find that commercial salmon vessel operators and, if applicable, handlers subject to this chapter statewide have approved the council program if the secretary finds either of the following:

(a) Sixty-five percent or more of the total number of commercial salmon vessel operators and handlers, who voted in the referendum and who harvested 51 percent or more of the total amount of salmon landed during the previous fiscal year by all commercial salmon vessel operators and handlers who voted in the referendum, approve the program.

(b) Fifty-one percent or more of the total number of commercial salmon vessel operators and handlers, who voted in the review referendum and who harvested 65 percent or more of the total amount of salmon landed during the previous fiscal year by all commercial salmon vessel operators and handlers who voted in the review referendum, approve the program.

76974. (a) This chapter shall continue if commercial salmon vessel operators and handlers vote for continuation in accordance with the requirements of this article.

(b) This chapter shall not continue in operation if commercial salmon vessel operators and handlers vote not to continue in accordance with the requirements of this article.

(c) If commercial salmon vessel operators vote for continuation and handlers do not vote for continuation, or if handlers vote for continuation and commercial salmon vessel operators do not vote for continuation, this chapter shall continue to be operative for the group voting for continuation and shall no longer apply to the group voting against continuation.

SEC. 58. Article 11 (commencing with Section 76981) is added to Chapter 16 of Part 2 of Division 22 of the Food and Agricultural Code, to read:

Article 11. Termination

76981. If the commercial salmon vessel operators and the handlers vote to terminate the council pursuant to Article 10 (commencing with Section

76971), the council shall remain in existence for the purpose of furnishing the secretary with a complete record of its outstanding financial obligations, accrued and to accrue. The secretary shall pay from the money deposited and disbursed any outstanding obligations and any obligations incurred by the secretary and the department under the terms and provisions of this section. Any money that remains shall be retained by the secretary to defray the expenses of formulation, issuance, administration, or enforcement of any subsequent program for salmon promotion. If no such program is undertaken within a period of three years from the date of termination of the council, that money shall be withdrawn from the approved depository and paid into the special account for enhancement and restoration programs established pursuant to Section 7861 of the Fish and Game Code.

SEC. 59. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.